

	<b>U.S. ENVIRONMENTAL PROTECTION AGENCY</b>  <b>Cooperative Agreement</b>		<b>GRANT NUMBER (FAIN):</b> 99248806	<b>DATE OF AWARD</b> 09/24/2013	
			<b>MODIFICATION NUMBER:</b> 0 <b>PROGRAM CODE:</b> BG		
			<b>TYPE OF ACTION</b> New		<b>MAILING DATE</b> 10/01/2013
			<b>PAYMENT METHOD:</b> Advance		<b>ACH#</b> 20047
<b>RECIPIENT TYPE:</b> State			<b>Send Payment Request to:</b> Las Vegas Finance Center		
<b>RECIPIENT:</b> New Jersey Dept of Environmental Protection 440 East State St., P.O. Box 420 Trenton, NJ 08625-0420 <b>EIN:</b> 21-6000928			<b>PAYEE:</b> New Jersey Dept of Environmental Protection 440 East State St., P.O. Box 420 Trenton, NJ 08625-0420		
<b>PROJECT MANAGER</b> Judy Jengo 440 East State St., P.O. Box 420 Trenton, NJ 08625-0420 <b>E-Mail:</b> judy.jengo@dep.state.nj.us <b>Phone:</b> 609-292-2885		<b>EPA PROJECT OFFICER</b> Richard Yue 290 Broadway, CASD/DO New York, NY 10007-1866 <b>E-Mail:</b> Yue.Richard@epamail.epa.gov <b>Phone:</b> 212-637-3424		<b>EPA GRANT SPECIALIST</b> Cynthia Pabon Grants and Audit Management Branch, OPM/GAMB <b>E-Mail:</b> pabon.cynthia@epa.gov <b>Phone:</b> 212-637-3405	
<b>PROJECT TITLE AND DESCRIPTION</b> FY 2014-2016 Performance Partnership Grant This agreement provides funding for the operation of New Jersey Department of Environmental Protection's (NJDEP's) continuing environmental programs while giving it greater flexibility to address its highest environmental priorities, improve environmental performance, achieve administrative savings and strengthen the partnership between NJDEP and EPA. This agreement funds statewide programs to: protect and improve air quality, water quality and drinking water; control pesticides; reduce radon exposure; and control hazardous waste.  The work includes outputs and outcomes associated with managing continuing environmental programs which include activities to protect and maintain air quality, water quality, and land quality; and to control pesticides.					
<b>BUDGET PERIOD</b> 07/01/2013 - 06/30/2016	<b>PROJECT PERIOD</b> 07/01/2013 - 06/30/2016	<b>TOTAL BUDGET PERIOD COST</b> \$85,460,784.00	<b>TOTAL PROJECT PERIOD COST</b> \$85,460,784.00		
<b>NOTICE OF AWARD</b>					
Based on your Application dated 08/22/2013 including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards \$9,912,086. EPA agrees to cost-share 68.66% of all approved budget period costs incurred, up to and not exceeding total federal funding of \$9,912,086. Recipient's signature is not required on this agreement. The recipient demonstrates its commitment to carry out this award by either: 1) drawing down funds within 21 days after the EPA award or amendment mailing date; or 2) not filing a notice of disagreement with the award terms and conditions within 21 days after the EPA award or amendment mailing date. If the recipient disagrees with the terms and conditions specified in this award, the authorized representative of the recipient must furnish a notice of disagreement to the EPA Award Official within 21 days after the EPA award or amendment mailing date. In case of disagreement, and until the disagreement is resolved, the recipient should not draw down on the funds provided by this award/amendment, and any costs incurred by the recipient are at its own risk. This agreement is subject to applicable EPA regulatory and statutory provisions, all terms and conditions of this agreement and any attachments.					
<b>ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)</b>		<b>AWARD APPROVAL OFFICE</b>			
<b>ORGANIZATION / ADDRESS</b> Grants and Audit Management Branch 290 Broadway, 27th Floor New York, NY 10007-1866		<b>ORGANIZATION / ADDRESS</b> U.S. EPA, Region 2 Clean Air and Sustainability Division 290 Broadway New York, NY 10007-1866			
<b>THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY</b>					
<b>Digital signature applied by EPA Award Official</b> Donna J. Vizian - Assistant Regional Administrator for Policy and Management				<b>DATE</b> 09/24/2013	

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FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$	\$ 9,912,086	\$ 9,912,086
EPA In-Kind Amount	\$	\$	\$ 0
Unexpended Prior Year Balance	\$	\$	\$ 0
Other Federal Funds	\$	\$	\$ 0
Recipient Contribution	\$	\$ 0	\$ 0
State Contribution	\$	\$ 26,786,376	\$ 26,786,376
Local Contribution	\$	\$ 0	\$ 0
Other Contribution	\$	\$ 0	\$ 0
Allowable Project Cost	\$ 0	\$ 36,698,462	\$ 36,698,462

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.605 - Performance Partnership Grants	Appropriations Act of 1996 (PL 104-134) Appropriations Act of 1998 (PL 105-65)	40 CFR PTS 31 & 35 SUBPT A

[illegible]



## Budget Summary Page

<b>Table A - Object Class Category (Non-construction)</b>	<b>Total Approved Allowable Budget Period Cost</b>
<b>1. Personnel</b>	\$39,443,597
<b>2. Fringe Benefits</b>	\$17,887,672
<b>3. Travel</b>	\$70,000
<b>4. Equipment</b>	\$1,220,000
<b>5. Supplies</b>	\$347,000
<b>6. Contractual</b>	\$2,700,000
<b>7. Construction</b>	\$0
<b>8. Other</b>	\$12,160,000
<b>9. Total Direct Charges</b>	\$73,828,269
<b>10. Indirect Costs: % Base</b>	\$11,632,515
<b>11. Total (Share: Recipient <u>31.34</u> % Federal <u>68.66</u> %.)</b>	\$85,460,784
<b>12. Total Approved Assistance Amount</b>	\$58,674,408
<b>13. Program Income</b>	\$0
<b>14. Total EPA Amount Awarded This Action</b>	\$9,912,086
<b>15. Total EPA Amount Awarded To Date</b>	\$9,912,086

## **Administrative Conditions**

### **1. UTILIZATION OF SMALL, MINORITY AND WOMEN'S BUSINESS ENTERPRISES**

#### **GENERAL COMPLIANCE, 40 CFR, Part 33**

The recipient agrees to comply with the requirements of EPA's Program for Utilization of Small, Minority and Women's Business Enterprises (MBE/WBE) in procurement under assistance agreements, contained in 40 CFR, Part 33.

#### **FAIR SHARE OBJECTIVES, 40 CFR, Part 33, Subpart D**

A recipient must negotiate with the appropriate EPA award official, or his/her designee, fair share objectives for MBE and WBE participation in procurement under the financial assistance agreements.

#### **Current Fair Share Objective/Goal**

The dollar amount of this assistance agreement is \$250,000, or more; or the total dollar amount of all of the recipient's non-Technical Assistance Grants (TAG) from EPA in the current fiscal year is \$250,000, or more. The **New Jersey Department of Environmental Protection** has negotiated the following, applicable MBE/WBE fair share objectives/goals with EPA as follows:

- for New Jersey MBE: Construction: 5.3%
- for New Jersey WBE: Construction: 12.6%
  
- for New Jersey MBE: Equipment, Supplies and Services: 1.1%
- for New Jersey WBE: Equipment, Supplies and Services: 3.4%

#### **Negotiating Fair Share Objectives/Goals, 40 CFR, Section 33.404**

If the recipient has not yet negotiated its MBE/WBE fair share objectives/goals, the recipient agrees to submit proposed MBE/WBE objectives/goals based on an availability analysis, or disparity study, of qualified MBEs and WBEs in their relevant geographic buying market for construction, services, supplies and equipment.

The recipient agrees to submit proposed fair share objectives/goals, together with the supporting availability analysis or disparity study, to the Regional MBE/WBE Coordinator within 120 days of its acceptance of the financial assistance award. EPA will respond to the proposed fair share objective/goals within 30 days of receiving the submission. If proposed fair share objective/goals are not received within the 120 day time frame, the recipient may not expend its EPA funds for procurements until the proposed fair share objective/goals are submitted.

#### **SIX GOOD FAITH EFFORTS, 40 CFR, Part 33, Subpart C**

Pursuant to 40 CFR, Section 33.301, the recipient agrees to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to ensure that sub-recipients, loan recipients, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained:

(a) Ensure Disadvantaged Business Enterprises (DBE) are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.

(b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.

(c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.

(d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.

(e) Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.

(f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

#### **MBE/WBE REPORTING, 40 CFR, Part 33, Sections 33.502 and 55.503**

The recipient agrees to complete and submit EPA Form 5700-52A, "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements" beginning with the Federal fiscal year reporting period the recipient receives the award, and continuing until the project is completed. Only procurements with certified MBE/WBEs are counted toward a recipient's MBE/WBE accomplishments.

The reports must be submitted **annually** for the period ending September 30th for:

- 40 CFR Part 30 Recipients (Non-profits and Institutions of Higher Education); and/or
- 40 CFR Part 35 Subpart A and Subpart B Recipients.

The reports are due within 30 days of the end of the annual reporting period (October 30th). Reports should be sent to Michele Junker, the Region 2 DBE Coordinator. Final MBE/WBE reports must be submitted within 90 days after the project period of the grant ends. Your grant cannot be officially closed without all MBE/WBE reports.

EPA Form 5700-52A may be obtained from the EPA Office of Small Business Program's Home Page on the Internet at <http://www.epa.gov/osbp/grants.htm>.

#### **CONTRACT ADMINISTRATION PROVISIONS, 40 CFR, Section 33.302**

The recipient agrees to comply with the contract administration provisions of 40 CFR, Section 33.302.

**BIDDERS LIST, 40 CFR, Section 33.501(b) and (c)**

Recipients of a Continuing Environmental Program Grant or other annual reporting grant, agree to create and maintain a bidders list. Recipients of an EPA financial assistance agreement to capitalize a revolving loan fund also agree to require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. Please see 40 CFR, Section 33.501 (b) and (c) for specific requirements and exemptions.

**2. ADVANCE METHOD OF PAYMENT**

In accordance with EPA regulations, the recipient is authorized to receive advance payments under this agreement, provided that the recipient takes action to minimize the time elapsing between the transfer of funds from EPA and the disbursement of those funds. The recipient shall request Federal payments by completing the EPA Payment Requests Form (EPA Form 190-F-04-001) and either emailing or faxing it to the Las Vegas Finance Center at LVFC-grants@epa.gov or 702-798-2423. This form can be found at [www.epa.gov/ogd/forms/forms.htm](http://www.epa.gov/ogd/forms/forms.htm). All email attachments must be sent in pdf format.

**3. DRUG-FREE WORKPLACE CERTIFICATION FOR ALL EPA RECIPIENTS**

The recipient organization of this EPA assistance agreement must make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in Title 2 CFR Part 1536 Subpart B. Additionally, in accordance with these regulations, the recipient organization must identify all known workplaces under its federal awards, and keep this information on file during the performance of the award.

Those recipients who are individuals must comply with the drug-free provisions set forth in Title 2 CFR Part 1536 Subpart C.

The consequences for violating this condition are detailed under Title 2 CFR Part 1536 Subpart E. Recipients can access the Code of Federal Regulations (CFR) Title 2 Part 1536 at <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=701081165f70316effa8ebf67df73de0&rqn=div5&view=text&node=2:1.2.11.11.2&idno=2>.

**4. FINANCIAL REQUIREMENTS**

Under the Automated Standard Application for Payments (ASAP), the recipient initiates an electronic or voice activated telephone payment request which is approved or rejected based on the amount of available funds authorized by EPA in the recipient's account. Approved funds are credited to the recipient organization at the financial institution identified on the recipient's ASAP enrollment application.

The recipient agrees to the following conditions in accepting this assistance agreement:

- a. Cash draw down will be made only as actually needed for its disbursement;
- b. The recipient will provide timely reporting of cash disbursements and balances as required;

- c. The recipient will impose the same standards of timing and reporting on secondary recipients, if any.

Failure on the part of the recipient to comply with the above conditions may cause the undisbursed portions of the assistance agreement to be revoked and financing method changed to a reimbursable basis.

## **5. FEDERAL FINANCIAL REPORTS/GRANT CLOSEOUT**

### **A) Interim Federal Financial Reports (FFRs)**

Pursuant to 40 CFR 31.41(b) and 31.50(b), EPA recipients shall submit an interim annual Federal Financial Report (SF-425) to EPA no later than 90 calendar days following the anniversary of the start date of the agreement. The FFR must be faxed to the Las Vegas Finance Office at 702-798-2423, emailed to LVFC-grants@epa.gov, or sent to the address below. A courtesy copy of the interim FFR can be submitted to the Grants and Audit Management Branch using one of the following options: email to Region2\_GrantApplicationBox@epa.gov, fax to 212-637-3518 or sent to us in the mail at U.S. EPA - Region 2, 290 Broadway, 27th Floor, New York, NY 10007. All email attachments must be sent in pdf format. Documents emailed to us in any other format cannot and will not be accepted.

### **B) Final Federal Financial Report**

At the end of the project, the recipient must submit a final Federal Financial Report to EPA no later than 90 calendar days after the end of the project period. The form is available on the internet at <http://www.epa.gov/ocfo/finservices/forms.htm>. All FFRs must be submitted to the Las Vegas Finance Center:

US EPA, Las Vegas Finance Center  
4220 S. Maryland Pkwy, Bld C, Rm 503  
Las Vegas, NV 89119

or by email: LVFC-grants@epa.gov or Fax to: 702-798-2423. All email attachments must be sent in pdf format.

The LVFC will make adjustments, as necessary, to obligated funds after reviewing and accepting a final Federal Financial Report. Recipients will be notified and instructed by EPA if they must complete any additional forms for the closeout of the assistance agreement.

EPA may take enforcement actions in accordance with 40 CFR 31.43 if the recipient does not comply with this term and condition.

### **C) Closeout**

The Administrative Closeout Phase for this grant will be initiated with the submission of a "final" FFR. At that time, the recipient must submit the following forms/reports to the EPA Region 2 Grants and Audit Management Branch, if applicable:

- Federally Owned Property Report



- An Inventory of all Property Acquired with federal funds
- Contractor's or Grantee's Invention Disclosure Report (EPA Form 3340-3)

Additionally, the recipient's Final Request for Payment should be submitted to the LVFC.

## **6. HOTEL-MOTEL FIRE SAFETY**

Pursuant to 40 CFR 30.18, if applicable, and 15 USC 2225a, the recipient agrees to ensure that all space for conferences, meetings, conventions, or training seminars funded in whole or in part with federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (PL 101-391, as amended). Recipients may search the Hotel-Motel National Master List at <http://www.usfa.dhs.gov/applications/hotel/> to see if a property is in compliance (FEMA ID is currently not required), or to find other information about the Act.

## **7. LOBBYING AND LITIGATION - ALL RECIPIENTS**

The chief executive officer of this recipient agency shall ensure that no grant funds awarded under this assistance agreement are used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. The recipient shall abide by its respective OMB Circular (A-21, A-87, or A-122), which prohibits the use of federal grant funds for litigation against the United States or for lobbying or other political activities.

### **RESTRICTIONS ON LOBBYING**

The recipient agrees to comply with Title 40 CFR Part 34, *New Restrictions on Lobbying*. The recipient shall include the language of this provision in award documents for all subawards exceeding \$100,000, and require that subrecipients submit certification and disclosure forms accordingly.

In accordance with the Byrd Anti-Lobbying Amendment, any recipient who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.

## **8. MANAGEMENT FEES**

Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term "management fees or similar charges" refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs which are not allowable under this assistance agreement. Management fees or similar charges may not be used to improve or expand the project funded under this agreement, except to the extent authorized as a direct cost of carrying out the scope of work.

## **9. EXTENSION OF PROJECT/BUDGET PERIOD EXPIRATION DATE**

If a no cost time extension is necessary to extend the period of availability of funds (budget

period), the recipient must submit a written request, including a justification as to why additional time is needed and an estimated date of completion to the EPA prior to the budget/project period expiration dates. The extension request should be submitted to the EPA, Grants and Audit Management Branch using one of the following options: email to Region2\_GrantApplicationBox@epa.gov, fax to 212-637-3518 or sent to us in the mail at U.S. EPA - Region 2, 290 Broadway, 27th Floor, New York, NY 10007. An interim FFR (SF-425) covering all expenditures and obligations to date, must be emailed or faxed to the Las Vegas Finance Office at LVFC-grants@epa.gov or 702-798-2423 or sent to the address below. To expedite processing of your request, please submit a courtesy copy of the interim FFR to the Grants and Audit Management Branch along with your extension request. All email attachments must be sent in pdf format. Documents emailed to us in any other format cannot and will not be accepted.

US EPA, Las Vegas Finance Center  
4220 S. Maryland Pkwy, Bld C, Rm 503  
Las Vegas, NV 89119

or by email: LVFC-grants@epa.gov or Fax to: 702-798-2423. All email attachments must be sent in pdf format.

## **10. RECYCLING AND WASTE PREVENTION**

In accordance with the policies set forth in EPA Order 1000.25 and Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management (January 24, 2007) and or 40 CFR 30.16, the recipient agrees to use recycled paper and double sided printing for all reports which are prepared as a part of this agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration.

### **STATE AGENCIES AND POLITICAL SUBDIVISIONS:**

In accordance with Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962) any State agency or agency of a political subdivision of a State which is using appropriated Federal funds shall comply with the requirements set forth. Regulations issued under RCRA Section 6002 apply to any acquisition of an item where the purchase price exceeds \$10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was \$10,000 or more. RCRA Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by EPA. These guidelines are listed in 40 CFR 247.

## **11. REIMBURSEMENT LIMITATION**

EPA's financial obligations to the recipient are limited by the amount of federal funding awarded to date as shown on line 15 in its EPA approved budget. If the recipient incurs costs in anticipation of receiving additional funds from EPA, it does so at its own risk.

## **12. SINGLE AUDITS**

In accordance with OMB Circular A-133, which implements the Single Audit Act, the recipient hereby agrees to obtain a single audit from an independent auditor, if it expends \$500,000 or more in total Federal funds in any fiscal year. Within nine months after the end of a recipient's fiscal year or 30 days after receiving the report from the auditor, the recipient shall submit the SF-SAC and a Single Audit Report Package. **The recipient MUST** submit the SF-SAC and a Single Audit Report Package, using the Federal Audit Clearinghouse's Internet Data Entry System. Complete information on how to accomplish the single audit submissions, you will need to visit the Federal Audit Clearinghouse Web site: <http://harvester.census.gov/fac/>

### 13. SUBAWARD POLICY

- a. The recipient agrees to:
  1. Establish all subaward agreements in writing;
  2. Maintain primary responsibility for ensuring successful completion of the EPA-approved project (this responsibility cannot be delegated or transferred to a subrecipient);
  3. Ensure that any subawards comply with the standards in Section 210(a)-(d) of OMB Circular A-133 and are not used to acquire commercial goods or services for the recipient;
  4. Ensure that any subawards are awarded to eligible subrecipients and that proposed subaward costs are necessary, reasonable, and allocable;
  5. Ensure that any subawards to 501(c)(4) organizations do not involve lobbying activities;
  6. Monitor the performance of their recipients and ensure that they comply with all applicable regulations, statutes, and terms and conditions which flow down in the subaward;
  7. Obtain EPA's consent before making a subaward to a foreign or international organization, or a subaward to be performed in a foreign country; and
  8. Obtain approval from EPA for any new subaward work that is not outlined in the approved work plan in accordance with 40 CFR Parts 30.25 and 31.30, as applicable.
- b. Any questions about subrecipient eligibility or other issues pertaining to subawards should be addressed to the recipient's EPA Project Officer. Additional information regarding subawards may be found at <http://www.epa.gov/ogd/guide/subaward-policy-part-2.pdf>. Guidance for distinguishing between vendor and subrecipient relationships and ensuring compliance with Section 210(a)-(d) of OMB Circular A-133 can be found at <http://www.epa.gov/ogd/guide/subawards-appendix-b.pdf> and <http://www.whitehouse.gov/omb/circulars/a133/a133.html>.
- c. The recipient is responsible for selecting its subrecipients and, if applicable, for conducting subaward competitions.

### 14. SUSPENSION AND DEBARMENT

Recipient shall fully comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Responsibilities of Participants Regarding Transactions (Doing Business with Other

Persons).” Recipient is responsible for ensuring that any lower tier covered transaction as described in Subpart B of 2 CFR Part 180 and 2 CFR Part 1532, entitled “Covered Transactions,” includes a term or condition requiring compliance with Subpart C. Recipient is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. Recipient acknowledges that failing to disclose the information as required at 2 CFR 180.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment.

Recipients may access suspension and debarment information at <http://www.sam.gov>. This system allows recipients to perform searches determining whether an entity or individual is excluded from receiving Federal assistance. This term and condition supersedes EPA Form 5700-49, “Certification Regarding Debarment, Suspension, and Other Responsibility Matters.”

## **15. TRAFFICKING IN PERSONS**

### **a. Provisions applicable to a recipient that is a private entity**

1. You as the recipient, your employees, subrecipients under this award, and subrecipients’ employees may not:
  - i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
  - ii. Procure a commercial sex act during the period of time that the award is in effect; or
  - iii. Use forced labor in the performance of the award or subawards under the award.
2. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity:
  - i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or
  - ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either:
    - A. Associated with performance under this award; or
    - B. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our Agency at 2 CFR 1532.

### **b. Provision applicable to a recipient other than a private entity. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity:**

1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or
2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either:
  - i. Associated with performance under this award; or
  - ii. Imputed to the subrecipient using the standards and due process for imputing

the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 CFR 1532

**c. Provisions applicable to any recipient**

1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:
  - i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
  - ii. Is in addition to all other remedies for noncompliance that are available to us under this award.
3. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

**d. Definitions. For purposes of this award term:**

1. "Employee" means either:
  - i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
  - ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
2. "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
3. "Private entity":
  - i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.
  - ii. Includes:
    - A. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
    - B. A for-profit organization.
4. "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

**16. DUNS AND CCR/SAM REQUIREMENTS**

Central Contractor Registration/System for Award Management and Universal Identifier Requirements.

A. Requirement for Central Contractor Registration (CCR)/System for Award Management (SAM). Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain the currency of your information in the SAM until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at

least annually after the initial registration, and more frequently if required by changes in your information or another award term.

B. Requirement for Data Universal Numbering System (DUNS) numbers. If you are authorized to make subawards under this award, you:

1. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its DUNS number to you.
2. May not make a subaward to an entity unless the entity has provided its DUNS number to you.

C. Definitions. For purposes of this award term:

1. Central Contractor Registration (CCR)/System for Award Management (SAM) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the System for Award Management (SAM) Internet site <http://www.sam.gov>

2. Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at <http://fedgov.dnb.com/webform> ).

3. Entity, as it is used in this award term, means all of the following, as defined at 2 CFR part 25, subpart C:

- a. A Governmental organization, which is a State, local government, or Indian tribe;
- b. A foreign public entity;
- c. A domestic or foreign nonprofit organization;
- d. A domestic or foreign for-profit organization; and
- e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

4. Subaward:

- a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
- b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. \_\_.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").
- c. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.

5. Subrecipient means an entity that:

- a. Receives a subaward from you under this award; and

- b. Is accountable to you for the use of the Federal funds provided by the subaward.

## 17. SUBAWARD REPORTING AND COMPENSATION

### I. Reporting Subawards and Executive Compensation.

#### a. Reporting of first-tier subawards.

1. Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e. of this award term).
2. Where and when to report.
  - i. You must report each obligating action described in paragraph a.1. of this award term to [www.fsrs.gov](http://www.fsrs.gov).
  - ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)
3. What to report. You must report the information about each obligating action that the submission instructions posted at [www.fsrs.gov](http://www.fsrs.gov) specify.

#### b. Reporting Total Compensation of Recipient Executives.

1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if –
  - i. the total Federal funding authorized to date under this award is \$25,000 or more;
  - ii. in the preceding fiscal year, you received—
    - (A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
    - (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:

- i. As part of your registration Central Contractor Registration/System for Award Management profile available at <http://www.sam.gov>
- ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if --

i. in the subrecipient's preceding fiscal year, the subrecipient received—

(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and,

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:

i. To the recipient.

ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that



year.

d. Exemptions

1. If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

- i. Subawards, and
- ii. The total compensation of the five most highly compensated executives of any subrecipient.

e. Definitions. For purposes of this award term:

1. Entity means all of the following, as defined in 2 CFR part 25:

- i. A Governmental organization, which is a State, local government, or Indian tribe;
- ii. A foreign public entity;
- iii. A domestic or foreign nonprofit organization;
- iv. A domestic or foreign for-profit organization;
- v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

2. Executive means officers, managing partners, or any other employees in management positions.

3. Subaward:

- i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
- ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. \_\_.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").
- iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

4. Subrecipient means an entity that:

- i. Receives a subaward from you (the recipient) under this award; and
- ii. Is accountable to you for the use of the Federal funds provided by the subaward.

5. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

- i. *Salary and bonus.*

- ii. *Awards of stock, stock options, and stock appreciation rights.* Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
- iii. *Earnings for services under non-equity incentive plans.* This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- iv. *Change in pension value.* This is the change in present value of defined benefit and actuarial pension plans.
- v. *Above-market earnings on deferred compensation which is not tax-qualified.*
- vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

## **18. CIVIL RIGHTS OBLIGATIONS**

### **GENERAL**

This term and condition incorporates by reference the signed assurance provided by the recipient's authorized representative on: 1) EPA Form 4700-4, "Preaward Compliance Review Report for All Applicants and Recipients Requesting EPA Financial Assistance"; and 2) Standard Form 424B or Standard Form 424D, as applicable. These assurances and this term and condition obligate the recipient to comply fully with applicable civil rights statutes and implementing EPA regulations.

### **STATUTORY REQUIREMENTS**

In carrying out this agreement, the recipient must comply with:

- Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP), by entities receiving Federal financial assistance.
- Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities by entities receiving Federal financial assistance; and
- The Age Discrimination Act of 1975, which prohibits age discrimination by entities receiving Federal financial assistance.

If the recipient is conducting an education program under this agreement, it must also comply with:

- Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in education programs and activities operated by entities receiving Federal financial assistance.

If this agreement is funded with financial assistance under the Clean Water Act (CWA), the recipient must also comply with:

- Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex in CWA-funded programs or activities.

## REGULATORY REQUIREMENTS

The recipient agrees to comply with all applicable EPA civil rights regulations, including:

- For Title IX obligations, 40 C.F.R. Part 5; and
- For Title VI, Section 504, Age Discrimination Act, and Section 13 obligations, 40 C.F.R. Part 7.
- As noted on the EPA Form 4700-4 signed by the recipient's authorized representative, these regulations establish specific requirements including maintaining compliance information, establishing grievance procedures, designating a Civil Rights Coordinator, and providing notices of non-discrimination.

## TITLE VI – LEP, Public Participation and Affirmative Compliance Obligation

- As a recipient of EPA financial assistance, you are required by Title VI of the Civil Rights Act to provide meaningful access to LEP individuals. In implementing that requirement, the recipient agrees to use as a guide the Office of Civil Rights (OCR) document entitled *"Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons."* The guidance can be found at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2004\\_register&docid=fr25jn04-79.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2004_register&docid=fr25jn04-79.pdf)
- If the recipient is administering permitting programs under this agreement, the recipient agrees to use as a guide OCR's Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs. The Guidance can be found at <http://edocket.access.gpo.gov/2006/pdf/06-2691.pdf>.
- In accepting this assistance agreement, the recipient acknowledges it has an affirmative obligation to implement effective Title VI compliance programs and ensure that its actions do not involve discriminatory treatment and do not have discriminatory effects even when facially neutral. The recipient must be prepared to demonstrate to EPA that such compliance programs exist and are being implemented or to otherwise demonstrate how it is meeting its Title VI obligations.

## 19. INDIRECT COSTS

If the recipient's negotiated rate does not extend through the life of the Assistance Agreement, additional indirect cost rate proposal(s) must be submitted until the full life of the Assistance Agreement is covered by negotiated indirect cost rates. The recipient **will not charge nor claim for reimbursement any indirect costs that are not covered by a negotiated indirect cost rate.**

## **Programmatic Conditions**

### **1. REVISED WORK PLAN**

On August 28, 2013, EPA granted conditional approval of the SFY 2014 – 2016 Performance Partnership Agreement (PPA) work plan submitted by NJDEP on August 22, 2013. EPA's conditional approval will remain in effect through December 31, 2013. Therefore, by December 31, 2013 of this grant agreement, NJDEP agrees to submit an approvable work plan to EPA that covers the period from July 1, 2013, through June 30, 2016.

NJDEP may incur costs on eligible activities, but is precluded from charging costs to this Cooperative Agreement after December 31, 2013 until the revised work plan has been submitted and approved by EPA.

### **2. PROGRESS REPORTS**

In accordance with 40 C.F.R. §§35.115 and 35.515 (Evaluation of Performance), NJDEP will produce an interim and final performance reports that must adequately address progress in achieving agreed-upon outputs and outcomes. NJDEP will annually produce a spreadsheet-based Annual Performance Report (APR) by September 30 of each year, starting on September 30, 2014. In order to accomplish this, NJDEP will submit a draft APR to EPA by July 30 of each year. The APR will include information outlining: a comparison of actual accomplishments for each individual PPG-funded commitment for that annual period; and a satisfactory explanation of why outcomes or outputs were not achieved and corrections to address deficiencies. EPA and NJDEP program managers will then meet to discuss the draft APR; based on the outcomes of this meeting, NJDEP will finalize the APR by September 30. Significant issues will be raised for discussion at the RA/Commissioner level, as appropriate. In addition, in the spirit of NJDEP and EPA's commitment to NEPPS process and, in particular, to minimize duplication of progress reporting, where appropriate, the APR will reference other program review mechanisms such as the two types of program review mechanisms in the list above. This approach will allow the APR to be an overall program review, providing primary progress reporting and referencing other program review mechanisms where appropriate. Following completion of each APR, NJDEP and EPA will work in partnership to consider any appropriate changes to the Spreadsheet of PPG-funded commitments.

Interim and final progress reports must prominently display the three Essential Elements required for state workplans and reports. They are:

- Essential Element 1 - Strategic Plan Goal
- Essential Element 2 - Strategic Plan Objective
- Essential Element 3 - Workplan Commitments plus time frame

### **3. FOOD AND REFRESHMENTS**

Unless the event(s) and all of its components (i.e., receptions, banquets and other activities that take place after normal business hours) are described in the approved workplan, the recipient agrees to obtain prior approval from EPA for the use of grant

funds for light refreshments and/or meals served at meetings, conferences, training workshops, and outreach activities (events). The recipient must send requests for approval to the EPA Project Officer and include:

- (1) An estimated budget and description for the light refreshments, meals, and/or beverages to be served at the event(s);
- (2) A description of the purpose, agenda, location, length and timing for the event.
- (3) An estimated number of participants in the event and a description of their roles.

Recipients may address questions about whether costs for light refreshments, and meals for events are allowable to the recipient's EPA Project Officer. However, the Agency Award Official or Grant Management Officer will make final determinations on allowability. Agency policy prohibits the use of EPA funds for receptions, banquets and similar activities that take place after normal business hours unless the recipient has provided a justification that has been expressly approved by EPA's Award Official or Grants Management Officer.

Note: U.S. General Services Administration regulations define light refreshments for morning, afternoon or evening breaks to include, but not be limited to, coffee, tea, milk, juice, soft drinks, donuts, bagels, fruit, pretzels, cookies, chips, or muffins. (41 CFR 301-74.11)

#### **4. EQUIPMENT**

The EPA Project Officer must approve the planned purchase of equipment with a unit costs of \$5,000 or more before such costs can be charged to the grant. Therefore, for any items of equipment costing \$5,000 or more, a list of equipment proposed to be purchased along with a justification as to the need for purchasing the equipment must be provided to the EPA Project Officer.

#### **5. COMPUTER EQUIPMENT PURCHASES**

The recipient shall obtain approval by the EPA, Region 2 Information Resources Management Branch, prior to the purchase of computer equipment, computer services or digital data with a unit price of \$5,000 or more.

#### **6. DISPOSAL OF EQUIPMENT**

NJDEP will use, manage and dispose of equipment acquired under this Assistance Agreement in accordance with 40 CFR Part 31.32, as appropriate and Grant Policy Issuance 02-02.1.

#### **7. EPA's INVOLVEMENT - COOPERATIVE AGREEMENT**

EPA's substantial involvement is defined in jointly developing environmental goals within a workplan; identifying specific measures of progress towards these goals; and articulating strategies and actions designed to achieve them. EPA oversees the implementation of State-authorized programs, and provides technical and analytical support for State-authorized programs. EPA's substantial involvement is met by providing input in workplans and program activities, holding regular conference calls and

site visits with NJDEP to discuss progress towards environmental program management and implementation.

## **8. PRE-AWARD COSTS**

In accordance with 40 C.F.R. Section 35.113 (Reimbursement for pre-award costs), EPA may reimburse recipients for pre-award costs incurred from the beginning of the funding period established in the grant agreement, July 1, 2013, if such costs had been allowed if incurred after the award and the recipients submitted complete grant applications before the beginning of the budget period. Such costs must be identified in the grant application EPA approves. The applicant incurs pre-award costs at its own risk. EPA is under no obligation to reimburse such costs unless they are included in an approved award.

## **9. SATISFACTORY PROGRESS - NONPOINT SOURCE**

In accordance with the provisions of the Clean Water Act, Section 319(h)(8) and the "Nonpoint Source Program and Grants Guidelines for States and Territories" published in the Federal Register in 2003, EPA Region 2 has determined that New Jersey has made satisfactory progress in meeting the schedule of milestones as delineated in the state's management program plan or the annual state workplans. This determination was based on the review of the State's Annual Nonpoint Source Reports, State's data input into the Grants Reporting and Tracking System (GRTS), status on annual workplan and grants applications, and any additional documents submitted in regards to the Section 319 Nonpoint Source Program. Award of future nonpoint funds is contingent upon the availability of funds and continued satisfactory progress in meeting the schedule of established milestones.

## **10. OPERATION AND MAINTENANCE**

The recipient will assure that best management practices (BMPs) cost-shared under this agreement are properly operated and maintained for the life of the practice, unless a particular BMP did not function as planned. The State must assure that any sub-award of Section 319 funds similarly include this condition. Additionally, EPA and the State reserve the right to periodically inspect a practice during the life span of the project and may request a refund for a project in which Operation and Maintenance is not performed.

## **11. NONPOINT SOURCE NATIONAL MEETINGS**

States are to set aside an appropriate amount of Section 319 funds in order to attend National Nonpoint Source Meetings.

## **12. SUFFICIENT PROGRESS**

EPA may terminate the assistance agreement for failure of the recipient to make sufficient progress so as to reasonably ensure completion of the project within the project period, including any extensions. EPA will measure sufficient progress by examining the performance required under the workplan in conjunction with the milestone schedule, the time remaining for performance within the project period, and/or

the availability of funds necessary to complete the project.

### **13. ELECTRONIC AND INFORMATION TECHNOLOGY ACCESSIBILITY**

Recipients and subrecipients are subject to the program accessibility provisions of Section 504 of the Rehabilitation Act, codified in 40 CFR Part 7, which includes an obligation to provide individuals with disabilities reasonable accommodations and an equal and effective opportunity to benefit from or participate in a program, including those offered through electronic and information technology ("EIT"). In compliance with Section 504, EIT systems or products funded by this award must be designed to meet the diverse needs of users (e.g., U.S. public, recipient personnel) without barriers or diminished function or quality. Systems shall include usability features or functions that accommodate the needs of persons with disabilities, including those who use assistive technology. At this time, the EPA will consider a recipient's websites, interactive tools, and other EIT as being in compliance with Section 504 if such technologies meet standards established under Section 508 of the Rehabilitation Act, codified at 36 CFR Part 1194. While Section 508 does not apply directly to grant recipients, we encourage recipients to follow either the 508 guidelines or other comparable guidelines that concern accessibility to EIT for individuals with disabilities. Recipients may wish to consult the latest Section 508 guidelines issued by the US Access Board or W3C's Web Content Accessibility Guidelines (WCAG) 2.0 (see <http://www.access-board.gov/sec508/guide/index.htm>).